

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR  
2 SENATE BILL 490

3 **48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

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10 AN ACT

11 RELATING TO WORKERS' COMPENSATION; REVISING REPORTING  
12 REQUIREMENTS FOR SELF-INSURED GROUPS; AMENDING THE GROUP SELF-  
13 INSURANCE ACT.

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 Section 1. Section 52-6-5 NMSA 1978 (being Laws 1986,  
17 Chapter 22, Section 79, as amended) is amended to read:

18 "52-6-5. INITIAL APPROVAL AND CONTINUED APPROVAL TO ACT  
19 AS A GROUP--QUALIFICATIONS.--

20 A. A proposed group shall file with the director an  
21 application for a certificate of approval accompanied by a  
22 nonrefundable filing fee in an amount established by the  
23 director. The application shall include the group's name, the  
24 location of its principal office, the date of organization, the  
25 name and address of each member and such other information as

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1 the director may reasonably require, together with the  
2 following:

3 (1) proof of compliance with the provisions of  
4 Subsection B of this section;

5 (2) a copy of the articles of association, if  
6 any;

7 (3) a copy of agreements with the  
8 administrator and with any service company;

9 (4) a copy of the bylaws of the proposed  
10 group;

11 (5) a copy of the agreement between the group  
12 and each member securing the payment of workers' compensation  
13 and occupational disease disablement benefits, which shall  
14 include provision for payment of assessments as provided for in  
15 Section 52-6-20 NMSA 1978;

16 (6) designation of the initial board of  
17 trustees and administrator;

18 (7) the address in this state where the books  
19 and records of the group will be maintained at all times;

20 (8) a pro-forma financial statement on a form  
21 acceptable to the director showing the financial ability of the  
22 group to pay the workers' compensation and occupational disease  
23 disablement obligations of its members; and

24 (9) proof of payment to the group by each  
25 member of not less than twenty-five percent of that member's

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1 first-year estimated annual net premium on a date approved by  
2 the director. Each payment shall be considered to be part of  
3 the first-year premium payment of each member if the proposed  
4 group is granted a certificate of approval.

5 B. To obtain and to maintain its certificate of  
6 approval, a group shall comply with the following requirements  
7 as well as any other requirements established by law or  
8 regulation not inconsistent with the following:

9 (1) a combined net worth of all members of a  
10 group of private employers of three million dollars  
11 (\$3,000,000) or greater, as determined by the director;  
12 provided that if a group's annual financial statement for the  
13 prior calendar year shows that at the end of that year the  
14 group had a surplus of at least one-third of its claim reserves  
15 and not less than five million dollars (\$5,000,000), then for  
16 the current calendar year, the group shall not be required to  
17 provide the director with evidence of the net worth of all of  
18 the group's members;

19 (2) security in a form and amount prescribed  
20 by the director, which shall be provided by either a surety  
21 bond, security deposit or financial security endorsement or any  
22 combination thereof. If a surety bond is used to meet the  
23 security requirement, it shall be issued by a corporate surety  
24 company authorized to transact business in this state. If a  
25 security deposit is used to meet the security requirement,

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1 securities shall be limited to bonds or other evidences of  
2 indebtedness issued, assumed or guaranteed by the United States  
3 [~~of America~~] or by an agency or instrumentality thereof;  
4 certificates of deposit in a federally insured bank; shares or  
5 savings deposits in a federally insured savings and loan  
6 association or credit union; or any bond or security issued by  
7 a state of the United States [~~of America~~] and backed by the  
8 full faith and credit of the state. Any such securities shall  
9 be deposited with the director and assigned to and made  
10 negotiable by the director pursuant to a trust document  
11 acceptable to the director. Interest accruing on a negotiable  
12 security so deposited shall be collected and transmitted to the  
13 depositor, provided the depositor is not in default. A  
14 financial security endorsement, issued as part of an acceptable  
15 excess insurance contract, may be used to meet all or part of  
16 the security requirement. The bond, security deposit or  
17 financial security endorsement shall be for the benefit of the  
18 state solely to pay claims and associated expenses and payable  
19 upon the failure of the group to pay workers' compensation or  
20 occupational disease disablement benefits it is legally  
21 obligated to pay. The director may establish and adjust  
22 requirements of the amount of security based on differences  
23 among groups in their size, types of local government services  
24 provided by members of the group, years in existence and other  
25 relevant factors; provided that the director shall not require

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1 an amount lower than one hundred thousand dollars (\$100,000)  
2 for any group during its first year of operation. Subsequent  
3 to the first year of operation, the director may waive the  
4 requirements of this paragraph;

5 (3) specific and aggregate excess insurance in  
6 a form, in an amount and by an insurance company acceptable to  
7 the director. The director may establish minimum requirements  
8 for the amount of specific and aggregate excess insurance based  
9 on differences among groups in their size, types of employment,  
10 years in existence and other relevant factors and may permit a  
11 group to meet this requirement by placing in a designated  
12 depository securities of the type referred to in Paragraph (2)  
13 of this subsection;

14 (4) an estimated annual standard premium of at  
15 least two hundred fifty thousand dollars (\$250,000) during a  
16 group's first year of operation. Thereafter, the annual  
17 standard premium shall be at least five hundred thousand  
18 dollars (\$500,000);

19 (5) an indemnity agreement jointly and  
20 severally binding the group and each member [~~thereof~~] of the  
21 group to meet the workers' compensation and occupational  
22 disease disablement obligations of each member. The indemnity  
23 agreement shall be in a form prescribed by the director and  
24 shall include minimum uniform substantive provisions prescribed  
25 by the director. Subject to the director's approval, a group

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1 may add other provisions needed because of its particular  
2 circumstances. The requirements of this paragraph shall only  
3 apply to private employers;

4 (6) a fidelity bond for the administrator in a  
5 form and amount prescribed by the director; and

6 (7) a fidelity bond for the service company in  
7 a form and amount prescribed by the director. The director may  
8 also require the service company providing claim services to  
9 furnish a performance bond in a form and amount prescribed by  
10 the director.

11 C. A group shall notify the director of any change  
12 in the information required to be filed under Subsection A of  
13 this section or in the manner of its compliance with Subsection  
14 B of this section no later than thirty days after [~~such~~] that  
15 change.

16 D. The director shall evaluate the information  
17 provided by the application required to be filed under  
18 Subsection A of this section to assure that no gaps in funding  
19 exist and that funds necessary to pay workers' compensation and  
20 occupational disease disablement benefits will be available on  
21 a timely basis.

22 E. The director shall act upon a completed  
23 application for a certificate of approval within sixty days.  
24 If, because of the number of applications, the director is  
25 unable to act upon an application within that period, the

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1 director shall have an additional sixty days to so act.

2 F. The director shall issue to the group a  
3 certificate of approval upon finding that the proposed group  
4 has met all requirements, or the director shall issue an order  
5 refusing [~~such~~] the certificate, setting forth reasons for  
6 [~~such~~] refusal, upon finding that the proposed group does not  
7 meet all requirements.

8 G. Each group shall be deemed to have appointed the  
9 director as its attorney to receive service of legal process  
10 issued against it in this state. The appointment shall be  
11 irrevocable, shall bind any successor in interest and shall  
12 remain in effect as long as there is in this state any  
13 obligation or liability of the group for workers' compensation  
14 or occupational disease disablement benefits."

15 Section 2. EFFECTIVE DATE.--The effective date of the  
16 provisions of this act is July 1, 2007.

underscoring material = new  
~~[bracketed material]~~ = delete